

STATE OF NEW MEXICO  
COUNTY OF MCKINLEY  
ELEVENTH JUDICIAL DISTRICT COURT

JEREMY GAY, as the Wrongful Death Personal  
Representative of the ESTATE OF RODNEY LYNCH  
and RHONDA LYNCH, INDIVIDUALLY,

Plaintiffs,

vs.

D-1113-CV-2020-00359

JUSTIN OLVERA, in his individual capacity,  
ELIJAH BOWMAN, in his individual capacity,  
NICOLA MARTINEZ-COLLINS, in her individual  
capacity, CITY OF GALLUP, a Municipal  
Corporation of the State of New Mexico, and  
GALLUP POLICE DEPARTMENT, ACTING CHIEF OF POLICE,  
FRANKLIN BOYD,

Defendants.

**DEPOSITION OF NEIL YAZZIE**

May 5, 2021  
2:30 p.m.  
210 South Second Street  
Gallup, New Mexico 87301

PURSUANT TO THE NEW MEXICO RULES OF CIVIL  
PROCEDURE this deposition was:

TAKEN BY: WILLIAM R. KEELER, ESQ.

REPORTED BY: KIM KAY SHOLLENBARGER, RPR  
NEW MEXICO CCR#236  
PAUL BACA PROFESSIONAL COURT REPORTING  
500 4th STREET, NORTHWEST, SUITE 105  
ALBUQUERQUE, NEW MEXICO 87102

**Exhibit "J"**

1 got a pretty good group of guys, we all help each other out.  
 2 **Q. That's good.**  
 3 A. Yeah, I really can't think of anything right now.  
 4 **Q. Explain to me what your responsibilities are on the**  
 5 **Response to Resistance Board.**  
 6 A. The Response to Resistance Board, our responsibility is  
 7 to just review the response to resistance given the instance  
 8 that we're assigned by Captain Padavich, who is in charge of  
 9 it. He will assign it to either myself or another one of the  
 10 members of the board and give them instructions. If it's  
 11 going to be two individuals or three that are going to review  
 12 the given incident and we're just only looking at the  
 13 Response to Resistance Policy, we are not looking at anything  
 14 else other than what's there in black and white for the  
 15 Response to Resistance Policy.  
 16 **Q. Captain Padavich also described it as use of force.**  
 17 A. Yes, yes. It's what changed from use of force to now  
 18 response to resistance.  
 19 **Q. When and you say it's assigned to two people, is**  
 20 **Captain Padavich always included with the other two or the**  
 21 **other three individuals or is it just luck of the draw of**  
 22 **who's going to review a case?**  
 23 A. Captain Padavich likes to disseminate so that way we  
 24 all get our fair share. It's not just like one officer  
 25 that's getting all the -- we call them R2Rs, R2R reports. We

1 all get a share of it, so it's not like a -- it's not always,  
 2 Sergeant Yazzie, you're going to get it. I think there's six  
 3 of us.  
 4 **Q. I'll read the names for you. I have Captain Padavich,**  
 5 **Lieutenant Collins, Sergeant Spencer, Sergeant Peyketewa,**  
 6 **Sergeant Yazzie, Sergeant Graham and Officer Desiderio.**  
 7 A. Yes.  
 8 **Q. Is that right?**  
 9 A. And Officer Deswood.  
 10 **Q. Deswood?**  
 11 A. Yes. Nicole Deswood.  
 12 **Q. Okay.**  
 13 A. And just to clarify, just for Officer Nicole Deswood,  
 14 hers is primarily more so if we have a new officer or a  
 15 female officer that's involved in an R2R incident. Based on  
 16 the training that we receive some of the incidents have to be  
 17 within their experience level.  
 18 **Q. In terms of handing out a review, or a case for you to**  
 19 **review, Captain Padavich will call you, email you, whatever**  
 20 **it is, but call you and let you know, we have a case for you**  
 21 **to review and here's the file? Or how does it work?**  
 22 A. In the past it was, here's the file, once you're done  
 23 with the file -- or he would meet with us. We would all get  
 24 pulled into the room. The two or three that are going to be  
 25 reviewing it, he would say, here's the file, who's going

1 first, we'll get it and then pass it along. Then once we're  
 2 done we type out our findings and we give that either to the  
 3 next one. But if we're all done -- like if I was the last  
 4 one I would give everything back to Captain Padavich and then  
 5 -- but now it's all through what we call Blue Team. It's all  
 6 digital documented now.  
 7 **Q. In terms of the incident that we're here for today**  
 8 **concerning Officer Olvera and Mr. Lynch, how did you learn**  
 9 **that you were going to be on the review board for that**  
 10 **incident?**  
 11 A. That was the old system where we all met in the  
 12 conference room and we were told that we would be reviewing  
 13 this R2R incident.  
 14 **Q. What do you recall about what you reviewed? And I will**  
 15 **give you a copy of your report here. I'll have you take a**  
 16 **look at that and let me know when you've had a chance to**  
 17 **review it.**  
 18 A. I've read it over.  
 19 **Q. It says a review date of October 2, 2019; is that**  
 20 **correct?**  
 21 A. Yes.  
 22 **Q. It only took you one day to review everything?**  
 23 A. No, this is the day I typed out my...  
 24 **Q. What do you recall reviewing in order to come up with**  
 25 **your report?**

1 A. I reviewed the incident report, I reviewed the  
 2 surveillance camera footage, I reviewed the interviews that  
 3 were conducted with the officers involved, basically the  
 4 whole case file under here, this IA-019-10, that was  
 5 basically -- that whole file was given to us to review.  
 6 Again, that was basically to -- our main focus was just on  
 7 the R2R incident itself.  
 8 **Q. Say that again.**  
 9 A. My main focus -- well, my main focus, or anybody on the  
 10 board is, our main focus is on the response to resistance  
 11 incident itself.  
 12 **Q. Is that use of force?**  
 13 A. Yes.  
 14 **Q. In looking over your report is there anything in**  
 15 **particular that struck you regarding the incident?**  
 16 MR. ISAACSON: Object to form, but you can answer.  
 17 A. Can you reclarify that.  
 18 **Q. (Mr. Keeler) Sure. Just looking through the report, in**  
 19 **your first sentence you typed up, "I find that PSO Justin**  
 20 **Olvera's actions were not within the Use of Force Policy by**  
 21 **administering a choke hold on Mr. Rodney Lynch." Did I read**  
 22 **that correctly?**  
 23 A. Yes.  
 24 **Q. What did you mean by, were not within the Use of Force**  
 25 **Policy?**



1 A. It's a move that's not taught. And when we're looking  
 2 at the response to resistance or use of force, we judge it on  
 3 two case law, and that's Graham versus Connor and Tennessee  
 4 versus Garner. Based on those two it didn't meet those  
 5 criteria.  
 6 Q. And that's under the case law, say that again, Graham  
 7 and what was the other one?  
 8 A. Graham versus Connor, which gives us the underlying  
 9 basis of response to resistance or use of force. And then  
 10 Tennessee versus Garner, which gives us the baseline for the  
 11 use of deadly force.  
 12 Q. It was your opinion that the actions taken violated the  
 13 case law that you just described to us?  
 14 A. Based on what we see there, yes.  
 15 Q. Just reading down again. You indicated that PSO Olvera  
 16 states, he did not hear what Mr. Lynch completely said. As  
 17 Mr. Lynch was exiting the van I saw that he swung his right  
 18 arm at PSO Olvera intending to grab his left arm to escort  
 19 him into the facility. Did you happen to have any recordings  
 20 of what Mr. Lynch was saying to Mr. Olvera?  
 21 A. We did have it from the van, so you could kind of hear,  
 22 but it's really muffled, so we're not able to hear very  
 23 clearly.  
 24 Q. And you listened to those van recordings?  
 25 A. Yes.

1 Q. Based on that, that's where you heard him say, "don't  
 2 mess with my" dot, dot, dot?  
 3 A. Yes.  
 4 Q. Could you make out what he was saying?  
 5 A. No.  
 6 Q. That's as far as you could get with it?  
 7 A. Yes.  
 8 Q. So you came up with a finding of excessive use of  
 9 force; is that correct? I'm looking at the bottom of your  
 10 report here.  
 11 A. Yes.  
 12 Q. Reading over this report now, was there anything else  
 13 you would like to add or is it complete?  
 14 A. I think the only thing I would add was where I put  
 15 choke hold in quotations, that's coming directly from the  
 16 report itself in the complaint, because personally -- like I  
 17 said, I couldn't see where his right arm was based on the  
 18 video, as indicated in my report, so that's where I should  
 19 have probably clarified that even more. That's why I put  
 20 that in direct quote of choke hold.  
 21 Q. Do you have any reason to believe that that's incorrect  
 22 in the reports that you referencing?  
 23 A. I don't know what the others, what their perception  
 24 was, and that's why we do multiple. For me personally, when  
 25 I viewed it, I just -- I don't know why, but when it comes

1 down to the complaint, that was one thing that was in there,  
 2 was the choke hold so that's why I put it in quotes, because  
 3 that's not coming from me, that's something that was...  
 4 Q. But you still believe it was an excessive use of force?  
 5 A. Yes.  
 6 Q. No reason to back off of your assessment of the entire  
 7 situation; is that correct?  
 8 A. That's correct.  
 9 Q. Do you recall doing a report for Officer Bowman, Elijah  
 10 Bowman?  
 11 A. Yes, I did.  
 12 Q. I'm going to show you what we have marked as Exhibit I,  
 13 and I'll let you review that.  
 14 A. I reviewed it.  
 15 Q. Have you had a chance to review?  
 16 A. Uh-huh.  
 17 Q. What is the review date that we have for Officer  
 18 Bowman?  
 19 A. September 27, 2019.  
 20 Q. Is that a good indication that you did a report for  
 21 Officer Bowman before you did your report for Mr. Olvera?  
 22 A. Yes.  
 23 Q. Any reason why you did his before the other one?  
 24 A. No.  
 25 Q. Can you read that report into the record for us,

1 please.  
 2 A. I checked not within policy, could include  
 3 underutilization of force response options. Comments, based  
 4 on the statement and video, I found that PSO Elijah Bowman  
 5 did not use excessive force during the incident involving  
 6 Rodney Lynch. During both incidents, I saw that PSO Bowman  
 7 reacted off of Mr. Lynch's actions both times. When applying  
 8 force at J.C. Penney's, PSO Bowman attempted to utilize a  
 9 control technique as Mr. Lynch was resisting, but was unable  
 10 to do so. Mr. Lynch eventually stopped resisting and sat up  
 11 under his own power. During the incident at Gallup detox, I  
 12 saw that PSO Bowman tried a deescalation tactic by asking PSO  
 13 Justin Olvera to process Mr. Lynch into the Gallup detox, but  
 14 Mr. Lynch appeared to become combative as he exited the van.  
 15 PSO Bowman's response was not the best tactic by just holding  
 16 onto Mr. Lynch's waist, but I found that it did not exceed  
 17 policy under use of force. I recommend additional training  
 18 for PSO Bowman in defensive tactics, response to resistance,  
 19 and command presence areas.  
 20 Q. Thank you. Talking about the incident at J.C.  
 21 Penney's, I believe you indicated that there was a -- did he  
 22 use force at J.C. Penney's to get him on the ground?  
 23 A. He was already on the ground.  
 24 Q. He was already on the ground.  
 25 A. Yes.

1 Q. Until you were given the file by Captain Padavich you  
2 hadn't reviewed it or talked to anybody about the case?

3 A. No.

4 MR. KEELER: No further questions. I'll pass the  
5 witness.

6 MR. ISAACSON: Mr. Becker may have some questions  
7 for you.

8 EXAMINATION

9 BY MR. BECKER:

10 Q. Sergeant Yazzie, my name is Robert Becker and I  
11 represent Justin Olvera and I've just got a couple of  
12 questions for you. You mentioned that you reviewed the  
13 complaint when you got this file as part of the Response to  
14 Resistance Board. What do you mean the complaint, I'm  
15 confused?

16 A. Well, the notice --

17 Q. What complaint are you referring to?

18 A. What I meant was the Notice of Review for the review  
19 that we were going to be reviewing this particular incident.

20 Q. In that notice that's where you found that there was a  
21 conclusion reached that Officer Olvera, PSO Olvera, used a  
22 choke hold on Mr. Lynch. Do I have that right?

23 A. Yes, I read it in there and I can't remember where in  
24 that file, it was a very thick file. I remember that was one  
25 thing that stuck out to me was the, in verbatim, choke hold

1 Tennessee versus Garner?

2 A. Tennessee versus Garner states that an officer can use  
3 deadly force under three conditions and the three conditions  
4 are; if the officer is going to be receiving serious bodily  
5 injury or death. Number two, if the person of another is  
6 going to be receiving serious bodily death or injury, and if  
7 the person is a violent felon and flees and has the potential  
8 of causing serious bodily injury or death to the person of  
9 another.

10 Q. Isn't it true that the old law, before Tennessee versus  
11 Garner, is that an officer was allowed to use deadly force on  
12 a fleeing felon, right?

13 A. In Tennessee, yes.

14 Q. Tennessee versus Garner essentially held, no, you can't  
15 use deadly force on a fleeing felony, you can only use deadly  
16 force on a dangerous fleeing felon, is that essentially what  
17 the holding of the case was?

18 A. Yes. When it comes to in regards to a fleeing felon,  
19 yes.

20 Q. What was your understanding of what the holding is in  
21 Graham versus Connor?

22 A. Graham versus Connor comes to what they call the Graham  
23 factors and the Graham factors is the severity of the crime,  
24 is the officer or person of another going to receive injury  
25 from that, and then third is the individual actively

1 and that's why on my review I put it in quotes. I just can't  
2 remember exactly where.

3 Q. Let me ask you this, you looked at the videotapes,  
4 right?

5 A. Yes.

6 Q. Could you see from the videotapes whether Justin  
7 Olvera, in fact, used a choke hold on Mr. Lynch?

8 A. Again, as I mentioned earlier, I could not tell. The  
9 only thing I could see in there was his left arm. As far as  
10 where his right arm was positioned, I can't 100 percent be  
11 certain where it was positioned.

12 Q. So your finding that there was an excessive use of  
13 force is based on a conclusion from the referral that you got  
14 that there was, in fact, a choke hold that was used on  
15 Mr. Lynch?

16 MR. KEELER: Objection, form and foundation.

17 MR. BECKER: Correct?

18 MR. KEELER: You can answer.

19 A. Yes.

20 Q. (Mr. Becker) That's nothing that you independently  
21 concluded from looking at the videotape, just so I'm clear,  
22 correct?

23 A. Yes.

24 Q. You mentioned Graham versus Connor and Tennessee versus  
25 Garner, what's your understanding of what the holding is in

1 resisting.

2 Q. Based on what you saw was Mr. Lynch actively resisting?

3 A. Yes.

4 Q. And in the way that he was resisting was there a  
5 possibility that Mr. Olvera or Mr. Bowman could have been  
6 injured --

7 A. Yes.

8 Q. -- by his resistance?

9 A. Yes.

10 Q. The severity of the crime was, he was brought in for  
11 being drunk in public, correct?

12 A. Yes.

13 Q. That's not real severe, is it?

14 A. That's actually not even -- you can go disorderly  
15 conduct, but more of it falls under detoxification act of him  
16 being intoxicated.

17 Q. But assaulting an officer where the officer could  
18 receive a serious injury, that's a severe crime, is it not?

19 A. Can you repeat that, you broke up.

20 Q. But assaulting an officer where there's a possibility  
21 that the officer could receive a severe injury, that would be  
22 a severe crime under the Graham factors, would it not?

23 A. Yes.

24 Q. Doesn't Graham also say that the reasonableness of a  
25 particular use of force must be judged from the perspective